BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI

In the Matter of the First Prudence Review of Costs Subject to the Commission-Approved Fuel Adjustment Clause of Union Electric Company d/b/a AmerenUE.	))))	File No. EO-2010-0255

POST-HEARING REPLY BRIEF OF THE STAFF OF THE MISSOURI PUBLIC SERVICE COMMISSION

PURSUANT TO COMMISSION ORDER

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STAFF'S POST-HEARING REPLY BRIEF

COMES NOW the Staff of the Missouri Public Service Commission (Staff) by and through counsel, and respectfully provides the following to the Missouri Public Service Commission (Commission) as its Post-Hearing Reply Brief.

The overwhelming weight of the competent and substantial evidence in this case makes it clear that the contracts between Union Electric Company d/b/a Ameren Missouri (Ameren) and American Electric Power Service Corporation as agent for AEP Operating Companies (AEP), and Ameren and Wabash Valley Power Association (Wabash), are not long-term partial requirements contracts. The Commission must conclude that Ameren acted imprudently when it excluded costs and revenues associated with those contracts from the calculation of net fuel and purchased power costs recoverable through Ameren's Commission authorized Fuel Adjustment Clause (FAC). Ameren's action in regards to the treatment of the cost and revenues associated with the AEP and Wabash contracts was unlawful and harmed its retail customers.

Ameren attempts to create an image that its FAC tariff sheets, and the facts and circumstances surrounding the development and implementation of those tariff sheets, are clear. However, the parties to this case would not be here today if they were. Ameren's attempt to circumvent Commission regulation and misapply the provisions of its FAC tariff sheets to benefit its shareholders is imprudent and unlawful.

Definition of Off-System Sales Revenues, Tariff Sheet 98.3, must be read in its entirety

Ameren's first defect in its argument regarding the definition of Off-System Sales Revenues (OSSR) in Ameren's Tariff Sheet 98.3, is that that the exclusion language in that definition does not apply to the phrase "long-term full or partial requirement sales." The full definition of OSSR is: "Off-System Sales shall include all sales transactions (including MISO revenues in FERC Account Number 447), excluding Missouri retail sales and long-term full and partial requirements sales, that are associated with (1) AmerenUE Missouri jurisdictional generating units, (2) power purchases made to serve Missouri retail load, and (3) any related transmission."[1] This definition from Ameren's tariff language that, to be excluded from OSSR, a long-term sale or a partial requirements sale must be "associated with (1) AmerenUE Missouri jurisdiction generating units, (2) power purchases made to serve Missouri retail load, and (3) any related transmission."[2] Ameren's own reading of the tariff fails because it does not read the definition in its entirety.

Further, nowhere in the record has Ameren provided any evidence as to what the definition of OSSR was prior to the January 2009 ice-storm that caused Noranda Aluminum to lose the majority of its load. The only evidence Ameren presented is what it determined the definition to mean after the ice-storm. Staff expert, Lena Mantle was the only individual to provide what the definition of OSSR meant prior to the January 2009 ice-storm.[3] Ms. Mantle testified that Staff's definition of OSSR was a description of wholesale municipal contracts between Ameren and the Municipalities.[4] Ms. Mantle also testified in Commission general rate case, File No. ER-2010-0036, that the subsequent agreement to add the term "municipality" to

[1] Exhibit 11, *Eaves* Direct/Rebuttal, p. 3, lines 15-24.
[2] Exhibit 11, *Eaves* Direct/Rebuttal, p. 3, lines 15-24.
[3] Exhibit 12, *Mantle* Direct/Rebuttal, p. 3, line 19.
[4] Exhibit 12, *Mantle* Direct/Rebuttal, p. 4, lines 3-25.

OSSR component of the FAC was to clarify the language from the previous Commission approved FAC.[5]

Long-Term

Ameren's definition of "long-term" in the FAC tariff provisions, means greater than one year, is based upon Ameren witness Jaime Haro's testimony of his experience in the power trading markets.[6] While Missouri Industrial Energy Consumer (MIEC) witnesses Maurice Brubaker and Henry Fayne discuss the demarcation of short-term versus long-term being one-year, their discussions of this demarcation relates to the power markets, not the public utility regulatory setting.[7]

Staff's expert, Dana Eaves and Missouri Energy Group's (MEG) expert, Billie Sue LaConte, rely on the long-standing definition of "long-term" found in the FERC Form 1. Electric utilities in Missouri, subject to this Commission rate regulating jurisdiction, such as Ameren, file the FERC Form 1 both at the Federal Energy Regulatory Commission (FERC) and at the Commission. While Ameren argues that FERC Form 1 does not apply because it predates the Federal Energy Policy Act of 1992 and FERC Order 888, FERC Order 888 went into effect in 1996. That means the FERC has had more than fifteen years to redefine the term "long-term" in its Form 1. Yet, the definition of "long-term" in the FERC Form 1 remains the same. Because in this instance it would benefit Ameren's shareholders, Ameren is attempting to persuade the Commission to adopt a power trading market definition of "long-term," instead of using the long-standing definition of "long-term" Ameren itself uses when reporting power sales to the Commission and the FERC.

[5] Ex. 18, *Transcript Vol. 31*, *Evidentiary Hearing March 23, 2010 Case No. ER-2010-0036*, p. 2519, lines 13-17.
[6] Exhibit 2, *Haro* Surrebuttal, p. 6, lines 8-9.
[7] Tr. Vol. 5, p. 501, lines 14-18; Tr. Vol. 5, p. 393, lines 14-16.

Since "long-term" is not defined in Ameren's tariff, the Commission, Staff and others, including Ameren, must look to Ameren's 2009 Annual Report filed with the Commission.[8] That Annual Report Ameren filed at the Commission is the same as the FERC Form 1 Report Ameren filed with the Federal Energy Regulatory Commission. In that FERC Form 1 "long-term" is defined to be "five years or longer and 'firm' means that service can not be interrupted for economic reasons and is intended to remain reliable even under adverse condition (e.g., the supplier must attempt to buy emergency energy from third parties to maintain deliveries of LF service) . . . ."[9] Ameren's contract with AEP was for fifteen months,[10] and its contract with Wabash was for eighteen months.[11] Neither of these contracts is for a period greater than five years.

As pointed out in the Staff's *Initial Brief*, Ameren's witness Mr. Haro believes the FERC Form 1 definitions are valid, but not for market transactions.[12] Here, the issue is not about characterizing transactions for purposes of describing them in the market; instead, the issue is about characterizing the transactions for purposes of Ameren's tariff which was approved by this Commission for purposes of Missouri state regulation of Ameren. Thus, under Ameren's agreement through Mr. Haro that the FERC Form 1 definition can still be used,[13] the Commission should rely upon them here to clarify the meaning of Ameren's FAC tariff provisions.

The AEP and Wabash contracts do not meet the definition of "long-term" contained within the OSSR exclusionary language because neither is over five years' duration or part of a

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[8] Exhibit 11, *Eaves* Direct/Rebuttal, p. 10, lines 17-18.
[9] Exhibit 11, *Eaves* Direct/Rebuttal, p. 11, lines 1-10.
[10] Exhibit 2, *Haro* Surrebuttal, Schedule JH-S1.
[11] Exhibit 2, *Haro* Surrebuttal, Schedule JH-S2.
[12] Tr. Vol. 2, p. 57, lines 16-19.
[13] Tr. Vol. 2, p. 57, lines 17-18.

course of conduct of renewing over periods exceeding five years or a series of shorter term contracts. The Commission should order Ameren to include the revenues associated with the AEP and Wabash contracts as a part of the OSSR component in its FAC.

Partial Requirements Contract

Staff urges the Commission to rely on the definition contained in FERC Form 1 and the Edison Electric Institute's definition of "requirements sales" for the meaning of that term in Ameren's FAC tariff sheets. The definition of "requirement service" is located on page 310 of the FERC Form 1 "Requirement service is service which the supplier plans to provide on an ongoing basis (i.e., the supplier includes projected load for this service in its system resource planning). In addition, the reliability of requirements service must be the same as, or second only to, the supplier's service to its own ultimate consumers."[14] EEI defines "requirement service" the same as it is defined in the FERC Form 1.[15]

The United States Energy Information Administration Independent Statistics and Analysis (EIA) defines "partial requirements consumer" as "a wholesale consumer with generating resources insufficient to carry all its load and whose energy seller is a long-term firm power source supplemental to the consumer's own generation or energy received from others. These terms and conditions of the sale are similar to those for a full requirements consumer."[16]

The contracts between Ameren and AEP and Ameren and Wabash, are not "partial requirements contracts" as that phrase is used in its FAC tariff sheets because they are not "on-going" contracts. Another key distinction between the Municipals, and AEP and Wabash, is that

[14] Tr. Vol. 4, p. 326, lines 9-15; Exhibit 11, *Eaves* Direct/Rebuttal, p. 10, lines 20-25; Exhibit 14, *Brubaker* Direct, Schedule MEB-2, p. 3.
[15] Exhibit 14, *Brubaker* Direct, p. 4, lines 7-11.
[16] Tr. Vol. 4, p. 344, line 20 – p. 345, line 3. The EIA defines a "full requirements consumers" as "a wholesale consumer without other generating resources whose electric energy seller is a sole source of long-term firm power for the consumer's service area. The terms and conditions of sale are equivalent to the seller's obligation to its own retail service, if any." Tr. Vol. 4, p. 344, lines 11-18.

the Municipals do not own their own generation, or if they own generation it is not economic to use as their primary source of electricity, but rather they rely on Ameren as the primary source to supply their energy needs.[17] AEP and Wabash have their own generation and do not rely upon Ameren to meet their load requirements on an ongoing basis.[18] Under the EIA definition of "partial requirements consumer" the utility seeking power does not have enough of its own generation to supply its customers with energy.[19] Ameren does not provide AEP or Wabash with any planning services.[20] Ameren had no intention of renewing its contracts with AEP and Wabash when it entered into them.[21] The AEP and Wabash contracts do not meet the definition of "partial requirements" as that phrase is used in exclusionary language of the definition of OSSR. The Commission should order Ameren to include the revenues associated with the AEP and Wabash contracts in its FAC as a part of the OSSR component of its FAC.

Rate of Return

Ameren attempts to discredit Staff expert Lena Mantle by bringing out testimony in File No. ER-2010-0036 regarding the AEP and Wabash contracts.[22] However, Ms. Mantle testified that she did not read the AEP and Wabash contracts before she testified in that case.[23] She accepted Ameren's representations that the AEP and Wabash contracts were long-term partial requirements sales. After the conclusions of File No. ER-2010-0036, Ms. Mantle reviewed the AEP and Wabash contracts, and based on that review has concluded they are in fact, not long-term partial requirements sales for purposes of Ameren's FAC.

[17] Tr. Vol. 2. p. 60 line 2 – p. 61, line 14.
[18] Tr. Vol. 2, p. 66, lines 19-25.
[19] Tr. Vol. 4, p. 344, line 20 – p. 345, line 3.
[20] Tr. Vol. 2, p. 65, lines 6-23.
[21] Tr. Vol. 2, p. 67, lines 22-25.
[22] Tr. Vol. 4, p. 383, lines 12-15; Exhibit 18.
[23] Tr. Vol. 4, p. 383, lines 12-15.

Ameren contends that when the Commission authorized rates in its 2010 general rate case, File No. ER-2010-0036, the Commission did not consider the risk of losing Noranda. When Staff expert Ms. Mantle was questioned on the risks of Ameren losing the Noranda load; she agreed with Commissioner Davis that this was something that Ameren should have considered when it entered into the Noranda contract.[24] Ms. Mantle also testified that a rate of return expert should analyze the risk of losing a large customer, such as Noranda.[25] Ameren attempts to discredit Staff expert Dana Eaves's testimony that loss of customer load is included in Commission authorized return on equity by pointing out his educational background in accounting.[26] Ameren completely mischaracterizes Mr. Eaves's testimony because he was not testifying as an expert on rate of return. Further, Ameren dismisses Mr. Eaves's decades of experience working on public utility rate cases, in which rate of return is always an issue.

Additionally, MEG'S expert witness, Ms. LaConte, testified that "when the Commission authorizes a return on equity, they also build in what's called a risk premium, and that takes into consideration the risk that a utility faces. Some of that is financial risk, other is business risk."[27] Ms. LaConte also testified that the Commission was aware that Noranda was a customer and that business risk may be associated with that customer.[28]

Conclusion

Staff's proposed prudency disallowance is $17,169,838, collectively for accumulation periods 1 and 2.[29] By not flowing the revenues associated with the AEP and Wabash contracts through Ameren's FAC, Ameren's retail customers were harmed, because Ameren has denied

[24] Tr. Vol. 4, p. 407, lines 4-8.
[25] Tr. Vol. 4, p. 434, lines 1-9.
[26] Tr. Vol. 4, p. 330, lines 8-10; Exhibit 11, *Eaves* Direct/Rebuttal, p. 7, line 24 – p. 8 line 1.
[27] Tr. Vol. 4, p. 455, lines 15-18.
[28] Tr. Vol. 4, p. 455, line 24 – p. 456, line 6.
[29] Exhibit 11, *Eaves* Direct/Rebuttal, p. 9, lines 5-7.

them the benefit of the AEP and Wabash contracts being credited to their FAC charges. While, at the same time, these retail customers are exposed to the risk of increased fuel and purchased power costs.[30] The Commission should find that Ameren was imprudent for not flowing $17,169,838, of revenue associated with the AEP and Wabash contracts to its customers through its FAC in the time period of March 1, 2009 through September 30, 2009.[31]

Again, Staff reiterates its requests that the Commission find that Ameren imprudently misapplied its FAC to the harm of its Missouri retail customers and order Ameren to pass the revenues associated with the AEP and Wabash contracts through the OSSR component with interest for the revenue Ameren received from the AEP and Wabash through June 2010.

WHEREFORE, the Staff submits the foregoing as its Post-Hearing Reply Brief in this matter.

Respectfully submitted,

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[30] Exhibit 11, *Eaves* Direct/Rebuttal, p. 9, lines 10-18.
[31] Exhibit 11, *Eaves* Direct/Rebuttal, p. 9, lines 5-18.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 24th day of February, 2011

/s/ Jaime N. Ott